The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE

Plaintiff,

v.

KRISTI NOEM, *et al.*

Defendants.

No. 2:25-cv-00633-DGE

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Noted for Consideration:
April 15, 2025

Hearing Scheduled:
April 17, 2025 at 1:30 PM

ORAL ARGUMENT REQUESTED

Defendants' opposition does not argue any lawful basis for the abrupt termination of Plaintiff's F-1 student status, and it fails to refute Plaintiff's clear showing on all *Winter* factors. In fact, two federal courts in the past week have issued TROs against DHS, recognizing that the mass SEVIS status terminations were likely "arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction." *Roe v. Noem*, No. 2:25-cv-00040-DLC, Doc. 11, p. 7 (D. Mont., Apr. 15, 2025) (granting mandatory

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injunction); *Liu v. Noem*, No. 1:25-cv-00133-SE-TSM, Doc. 13, p. 3 (D.N.H., Apr. 10, 2025) (granting mandatory injunction); *see also Doe No. 2 v. Trump*, No. 4:25-cv-00175-AMM, Doc. 7 (D. Ariz., April 15, 2025) (granting prohibitive injunction); *but see C.S. v. Noem*, No. 2:25-cv-00477-WSS, Doc. 22 (W.D. Pa., April 15, 2025) (refusing to grant mandatory injunction, but granting other relief).

Plaintiff's requested relief can be framed as either a mandatory or a prohibitive injunction. However, that distinction is moot. Plaintiff meets the higher standard for a mandatory injunction because the law and facts clearly favor injunctive relief. Plaintiff's likelihood of success is clear and substantial under the Administrative Procedure Act ("APA") and the Fifth Amendment. Defendants terminated his SEVIS status in a flagrant violation of their own regulations and without basic due process, and do not attempt to justify that violation in their opposition. If not immediately enjoined, this unlawful termination will inflict irreparable harm by derailing Plaintiff's education and putting him at risk of wrongful removal. By contrast, preserving Plaintiff's status poses no cognizable harm to the government and in fact serves the public interest in the rule of law and avoiding unwarranted deportations. Plaintiff respectfully submits that the Court should grant the TRO and restore him to the status quo ante as other courts have done (*Roe* and *Liu*), or at minimum issue an order barring Defendants from giving effect to the baseless termination while this case is adjudicated (*Doe No. 2*, D. Ariz.).

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The Requested TRO Preserves the Status Quo and Meets The Applicable Standard

Plaintiff asks the Court to maintain the last uncontested status quo – his active SEVIS status – pending resolution of this lawsuit. The government upset the status quo by terminating his SEVIS record without cause on April 4. An order restoring Plaintiff to active status or preventing Defendants from enforcing the termination simply preserves what was in place before Defendants' unlawful act. Courts routinely treat such relief as prohibitory in nature. *See e.g., Ariz. Dream Act Coalition v. Brewer*, 757 F. 3d 1053, 1060-61 (9th Cir. 2014) ("The 'status quo' refers to the legally relevant relationship *between the parties* before the controversy arose."); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 n.4 (9th Cir. 2015) (quoting *N.D. ex rel. Parents v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1112 n.6 (9th Cir. 2010). Indeed, the TRO issued by Judge Elliott required the defendants to "set aside their termination determination", thus reverting the case to the status quo ante, during the short duration proceeding the preliminary injunction hearing. *Liu* at pg. 5 (D.N.H. Apr. 10, 2025). Alternatively, Judge Zipps, in the District of Arizona, enjoined DHS from removing an international student or relying on a SEVIS termination that lacked lawful basis. *Doe No. 2* at 2. This Court can and should provide relief in the same fashion as either of those courts.

Even for mandatory relief, Plaintiff satisfies the heightened requirement. A mandatory injunction should issue where "the facts and law clearly favor the moving party" and when the case is not doubtful. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal citations omitted). Where Defendants err as a matter of law, an injunction compelling them to comply is appropriate even under a stricter standard. In *Garcia v. Google*, the Ninth Circuit cautioned that mandatory relief is "particularly disfavored", but only because the plaintiff in that case had not

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clearly established her underlying claim. *Id*. (Garcia failed to establish that she had a copyright claim in a five-second acting performance). By contrast, Plaintiff here demonstrates a clear legal entitlement to continued F-1 status and Defendants have failed to argue otherwise. Instead, the Defendants claim to have been unable to acquire his administrative record, despite the stipulated extension to the response deadline that was intended to "result in the Court having a more complete record on which to decide the TRO motion." Stipulated Motion and [Proposed] TRO Response Deadline, Doc. 10, pg. 2 (Apr. 11, 2025). As shown below and in Plaintiff's motion, the termination of his status blatantly violated controlling law, and all equitable factors tip sharply in his favor. This case presents exactly the type of law and facts that "clearly favor" his position and warrant affirmative TRO relief. *Garcia* at 740.

Moreover, Plaintiff intended that the court consider his request either in the mandatory or prohibitory form: "restore or otherwise reflect Plaintiff's F-1 status as active in SEVIS". Emergency Motion for Temporary Restraining Order, Doc. 3, pg. 15 (Apr. 11, 2025). This approach allows the Court to issue its order in a manner it believes most appropriate, whether in the manner of *Liu* to undo the termination or in the manner of *Doe No. 2* to prohibit Defendants from relying on or utilizing the unlawful termination. In short, no matter how the standard is articulated, Plaintiff meets it and should be granted relief.

I. Plaintiff Is Likely to Succeed on the Merits

A. Defendants' Termination of Plaintiff's F-1 Status Violates the APA

Plaintiff's APA claim is straightforward: the agency action at issue, termination of his F-1 student status in SEVIS, was final agency action and was not in accordance or authorized

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by any law. Defendants' opposition ignores the on-point authority holding that SEVIS terminations are reviewable final orders. *Jie Fang v. Dir. United States Immigr. & Customs Enf't*, 935 F.3d 172, 175 and 186 (3d Cir. 2019) ("The students are genuinely aggrieved after having their lawful status terminated and a notation of fraud placed on their records, thereby permanently branding each of them with a Scarlett 'F.'"). Defendants cannot escape the clear regulatory limits on their termination power enumerated in 8 C.F.R. §§ 214.1.[1]

Defendants' suggestion that Plaintiff's loss of status is not an immediate harm is meritless. The Defendants have issued a final order by terminating Plaintiff's SEVIS status. *Jie Fang*, 935 F.3d at 186. That termination had the immediate effect of terminating Plaintiff's studies and research, ability to change status, and ability to start curricular or optional practical training. After termination of SEVIS status, "[i]t is highly unlikely that any student will simply be allowed to remain here." *Id*. One merely has to turn on the evening news to be aware and take notice that the Defendants are actively placing students in removal proceedings for a vast swath of activities, actively violating due process by forcibly removing noncitizens without court review, and ignoring the rule of law by refusing to bring back wrongfully removed noncitizens. Plaintiff should not have to wait and "permanently endure remaining here with the threat of imminent removal and all of its attendant circumstances permanently hanging over [his] head[]." *Id*.

Termination of a student's SEVIS record for alleged criminal activity "constitutes a failure to maintain status". 8 C.F.R. § 214.1(g). A failure to maintain status is a ground of deportation: "Any alien who was admitted as a nonimmigrant and who has failed to maintain

1 In *Jie Fang*, the court found that "DHS appears to have terminated their F-1 visas without the statutory authority to do so. . . . [T]he ability to terminate an F-1 visa is limited by [8 C.F.R.] § 214.1(d)." *Id*. At 185 fn. 100.

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the nonimmigrant status in which the alien was admitted . . . or to comply with the conditions of any such status, is deportable." 8 US.C. § 1227(a)(1)(C)(i). A student who has not maintained status is not eligible to work or study. There are no administrative avenues available to remedy clear agency error in terminating a student's status. *Jie Fang*, 935 F.3d at 186. Here, Defendants have made a complete and operative decision declaring Plaintiff to be in violation of the terms of his status and therefore terminating it. They do not claim any ongoing process or pending proceeding that could undo it. Their opposition notably does not commit to any internal review; instead, it merely states that they have not reviewed the record. Thus, by every measure, this is final agency action subject to APA review. 5 U.S.C. § 704.

On the merits, Plaintiff is more than likely to succeed. The undisputed facts show that Plaintiff did nothing to violate his F-1 status. Defendants terminated his status without notice or explanation, and the only conceivable rationale, gleaned from similar cases and the vague SEVIS annotation to criminal records, is that DHS is enforcing a new policy – created without process or publication – terminating students' status based on either visa revocations or criminal record checks that turned up no disqualifying convictions. Neither rationale is legally permissible. DHS's own regulations strictly limit the grounds on which a student's status may be terminated, and Plaintiff's case satisfies none of them. Under 8 C.F.R. § 214.1(d), DHS may terminate an F-1 student's SEVIS status during the period of their authorized stay only in three specific circumstances: (1) revocation of a waiver of inadmissibility under INA § 212(d)(3) or (4); (2) introduction of a private bill to confer permanent resident status on the student; or (3) DHS's publication of a Federal Register notice of national security, diplomatic, or public safety reasons for termination. The regulation states these conditions expressly, and "none of those

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mechanisms were employed in this case." *Jie Fang*, 935 F.3d at 185 fn. 100. This exhaustive list omits the only bases that seem to be in play: a routine criminal background flag. As the Third Circuit observed, DHS appears to be acting "without the statutory authority to do so," because its power to terminate F-1 status is limited to § 214.1(d) scenarios. *Jie Fang*, 935 F3d. at 185 fn. 100.

Defendants try to sidestep this fatal flaw by citing generic immigration enforcement principles, but they identify no statute or regulation that permits the termination of Plaintiff's status. Defendants' opposition tellingly does not dispute that Plaintiff remained fully enrolled, in good academic standing, and never violated any condition of his status. Nowhere do the regulations say that a mere arrest or pending case is grounds for terminating status. Defendants did not have license to terminate his SEVIS status. Indeed, terminating Plaintiff's SEVIS status on the basis of pending criminal charges is both *ultra vires* and arbitrary. Their doing so was "not in accordance with law", "in excess of statutory jurisdiction, authority", and "without observance of procedure required by law" thus making it a classic APA violation. 5 U.S.C. § 706(A), (C), (D). This Court should reach the same decision as the other courts to consider the issue of recent SEVIS terminations and find that Plaintiff is likely to succeed on the merits of his APA claim.

B. Defendants' Conduct Violates Plaintiff's Fifth Amendment Right to Due Process

Defendants contend that Plaintiff lacks any "property interest" in his F-1 status or SEVIS record. Opp. 8. But Plaintiff paid a fee to Defendants at the commencement of his academic program. *See* 8 C.F.R. § 214.2(f)(19); 8 C.F.R. § 214.13(a). In particular, § 214.13(a)

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directs that specified noncitizens (including Doe) "are required to submit a payment . . . for their status to the Student and Exchange Visitor Program (SEVP) . . . ." *See also* § 214.13(a)(1) (stating F-1 students are required to pay $350). As a result, Plaintiff has a property interest in not having his SEVIS record terminated without notice or an opportunity to respond. *See Wong Wing v. United State*s, 163 U.S. 228, 238 (1896) ("all persons within the territory of the United States are entitled to the protection" of the Fifth Amendment). Furthermore, Plaintiff has a property interest in his continued university education, which was immediately halted due to his SEVIS termination and will impact his degree completion and credit transfer to a foreign university. *See, e.g.*, *Assenov v. Univ. of Utah*, 553 F. Supp. 2d 1319, 1327 (D. Utah 2008) ("The parties correctly agree that . . . continued enrollment . . . is a property interest entitled to constitutional due process protections."), citing *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1181 (10th Cir.2001); *Babinski v. Queen*, 621 F. Supp. 3d 632, 645 (M.D. La. 2022) (finding a contractual property interest in continuing education that has already started), *rev'd on other grounds sub nom. Babinski v. Sosnowsky*, 79 F.4th 515 (5th Cir. 2023); *Caldwell v. Univ. of New Mexico Bd. of Regents*, 679 F. Supp. 3d 1087, 1152 (D.N.M. 2023) ("the Court concludes that Caldwell has a property right in his continued education at UNM").

Here, Plaintiff has more than a "mere expectation" of continuing his F-1 status; he has been lawfully admitted, paid his SEVIS fee prior to entry, entered into a contract with the University and SEVP to pursue his studies and research, is actively pursuing a doctoral program, and remains in good standing at the University of Washington. Doe Decl. ¶¶ 6–7, 11.

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The legal framework allows him to remain in the United States "for duration of status" so long as he complies with program requirements, which he has. 8 C.F.R. § 214.2(f)(5).

In addition to the property interest in his SEVIS status, Defendants' summary termination of Plaintiff's SEVIS record, without notice or opportunity to respond, deprives Plaintiff of a significant liberty interest in not being branded out of status and thus subject to detention or removal. *Yamataya v. Fisher,* 189 U.S. 86, 100–01 (1903); *Jie Fang v. Dir. United States Immigr. & Customs Enf't*, 935 F.3d 172, 186 (3d Cir. 2019). A short post hoc hearing—if removal proceedings were ever commenced—cannot remedy the immediate harm inflicted by the wrongful termination, as an immigration judge would lack authority to reinstate F-1 status. 8 C.F.R. § 214.2(f)(16). Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), Plaintiff's high private interest, coupled with the grave risk of erroneous deprivation and the minimal governmental interest in skipping basic procedures, compels a finding that due process was violated. Indeed, it is far beyond a mere "risk" of such deprivation. The deprivation has already occurred here with Plaintiff being unable to continue with his degree program, and placing the Plaintiff at risk of losing active research grants that he is working on. Doe Decl. ¶ 5.

Defendants do not dispute that they gave Plaintiff no notice or hearing. That alone constitutes a procedural due process violation. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Aliens who have once passed through our gates…may be expelled only after proceedings conforming to traditional standards of fairness…"). Hence, Plaintiff is also likely to succeed on his due process claim.

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II. THE REMAINING EQUITABLE FACTORS STRONGLY FAVOR A TRO

A. Plaintiff Faces Irreparable Harm

Defendants claim that Plaintiff's harms are speculative (Opp. 6–7), but the evidence is unequivocal that termination of SEVIS status:

- Immediately forces Plaintiff to stop his studies and threatens expulsion from his doctoral program. Doe Decl. ¶¶ 5, 12–13.
- Renders Plaintiff ineligible to continue lab research funded by time-sensitive grants. Doe Decl. ¶ 5.
- Marks Plaintiff as "out-of-status," creating a significant risk of being placed in removal proceedings or even detention. *Cf. Nken v. Holder*, 556 U.S. 418, 435 (2009).
- Causes unlawful presence to accrue, subjecting Plaintiff to multi-year bars on reentry if he remains unprotected and is later forced to depart. 8 U.S.C. § 1182(a)(9)(B).

These are quintessential irreparable harms because no later award of damages could restore Plaintiff's lost education or cure the immigration bars triggered by unlawful presence. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). The risk of detention, removal, and permanent damage to Plaintiff's academic career constitutes imminent irreparable injury warranting immediate relief.

B. The Balance of Equities Weighs Heavily in Plaintiff's Favor

Restoring Plaintiff's SEVIS record, or preventing Defendants from interfering with its restoration, simply preserves the status quo—allowing a single doctoral student to continue lawful studies while the Court adjudicates the merits. In contrast, if the TRO is denied,

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Plaintiff's academic and professional future will be irreparably derailed. It is not equitable or just to permit one party to bear a risk of serious harm while the other party bears no real risk. *See Winter v. NRDC, Inc.*, 55 U.S. 7, 20 (2008) (requiring only that the balance of the equities "tip[]" in Plaintiff's favor). Defendants articulate no specific burden from continuing Plaintiff's F-1 status or any risk that Plaintiff has created pending resolution.

C. Injunctive Relief Serves the Public Interest

When the government is a party, the balance of equities and the public interest factors merge. *Nken*, 556 U.S. at 435. "[I]t may be assumed that the Constitution is the ultimate expression of the public interest." *Llewelyn v. Oakland Cnty. Prosecutor's Off.*, 402 F. Supp. 1379, 1393 (E.D. Mich. 1975). Granting a TRO prevents a per se violation of statutory or constitutional protections, which plainly furthers the public interest. Preserving the contributions of international students to American universities and innovation is also in the national interest, as is allowing Plaintiff to complete the research for which he received publicly-funded grants. Defendants still retain every legal avenue to address any legitimate public safety concerns: Plaintiff's mere continuation of studies poses no credible threat.

Finally, although there may be a public interest in "the Executive's ability to enforce U.S. immigration laws," Opp. 9, that interest must end when the Executive seeks to enforce its immigration policies without regard to those laws.

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D. No Bond or a Nominal Bond Should Be Required

This Court has discretion under Fed. R. Civ. P. 65(c) to waive the bond requirement when the balance of equities strongly favors Plaintiff and there is little risk of monetary harm to Defendants. *See Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011). Here, there is no financial prejudice to the government by maintaining a single student in F-1 status and no indication of costs or damages that the United States might incur if it were later determined the TRO was improvidently granted. Indeed, the Defendants provide no evidence of any financial harm that could accrue in the event that the TRO was improvidently granted. Accordingly, the Court should require no bond, or at most a nominal bond.

III. CONCLUSION

For the foregoing reasons and the arguments stated in Plaintiff's opening Motion and this Reply, Plaintiff respectfully requests that the Court GRANT the Temporary Restraining Order, restore or otherwise reflect Plaintiff's F-1 status as active in SEVIS, and enjoin any removal or detention based on his SEVIS termination or pending DUI charge, while this case is adjudicated on the merits.

// (continued)

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Respectfully submitted this 16th Day of April 2025,

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Certificate of Service

I certify that on April 16, 2025, I electronically filed the foregoing document, together with all attachments, with the Clerk of the Court for the Western District of Washington using the CM/ECF system. As it is presently after business hours, I will serve the United States Attorney via Personal Service first thing tomorrow morning. I have also sent a courtesy copy of this filing, together with all attachments and the Complaint in this matter, via email to Assistant U.S. Attorneys Whitney Passmore <Whitney.Passmore@usdoj.gov>, Alixandria Morris <Alixandria.Morris@usdoj.gov> and Michelle Lambert <Michelle.Lambert@usdoj.gov>.

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